

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

OP.No. 29293 of 1999(K)

PETITIONER:

V.P. JAYANARAYAN, JAYA BHAVAN, K.P. XI/329, MANNADI LANE,
AMBALAMUKKU, PEROORKADA PO, THIRUVANANTHAPURAM-695005

BY ADVS.SHRI.ASOK B.SHENOY & SMT.LAKSHMI B.SHENOY

RESPONDENTS:

1. THE INDUSTRIAL TRIBUNAL, KOLLAM.
2. LORD KRISHNA BANK LTD., REPRESENTED BY ITS CHAIRMAN,
ADMINISTRATIVE OFFICE, INDIAN EXPRESS BUILDING,
KALOOR, KOCHI 682 017.

BY ADV. SRI.M.PATHROSE MATHAI
SRI.SAJI VARGHESE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP 29293/99

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE STATEMENT OF CLAIMS FILED BY PETITIONER BEFORE 1ST RESPONDENT, DATED 23.9.97.

EXT.P2 TRUE COPY OF WRITTEN STATEMENT FILED BY 2ND RESPONDENT BEFORE 1ST RESPONDENT DATED 20.1.98.

EXT.P3 TRUE COPY OF REJOINDER FILED BY 2ND RESPONDENT BEFORE 1ST RESPONDENT DATED 17.2.98.

EXT.P4 TRUE COPY OF AWARD DATED 6.1.99 PASSED BY 1ST RESPONDENT IN I.D. NO.34 OF 1997

Antony Dominic, J.
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O.P.No.29293 of 1999
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Dated this the 20th day of February, 2007.

JUDGMENT

The workman in I.D.No.34 of 1997 on the file of the Industrial Tribunal, Kollam, which has rendered Ext.P4 award is the writ petitioner. The issue referred for adjudication to the Tribunal was the following:

“Whether the action of the management of Lord Krishna Bank Ltd in terminating the services of Sri.V.P.Jayanarayan, temporary clerk is legal and justified? If not, to what relief the workman is entitled?”

The case of the workman was that he was employed as a Clerk in the Lord Krishna Bank, Thiruvananthapuram Branch after being selected in a test and interview conducted by the management Bank. According to him, though he was appointed to a permanent vacancy, the Bank had technically designated him as a temporary Clerk with the object of depriving him the status and privileges of a permanent workman. It is contended that he had continuous service from 15.3.1994 till 8.10.1994, but Management – Bank created artificial recordal breaks

in the service of the workman with the aforesaid intention. He requested the Management – Bank to regularise his services as permanent employee, since he was continuously working against a permanent vacancy. Instead of considering the petitioner's request the Management – Bank retrenched the petitioner's service in violation of the provisions of Industrial Disputes Act and Awards and Bipartite Settlements existing in the Banking industry. On the other hand, the Management – Bank contended that there was some procedural delay in making regular appointment to the clerical cadre in as much as they needed permission of the Reserve Bank of India. It is stated that the period of appointment was from 16.3.1994 to 7.6.1994, 15.6.1994 to 4.9.1994 and 10.9.1994 to 9.10.1994, and that the workman had accepted the terms of appointment which enable the Bank to dispense with his services at the expiry of the period specified in each of such appointment orders, without any protest and that he also accepted the termination notice. Bank contends that the termination does not amount to retrenchment.

2. Before the Tribunal, the parties produced evidence, both oral and documentary and finally the Tribunal by Ext.P4 award, held that the action of the Management – Bank terminating the services of the petitioner is legal. It is this award that is under challenge.

3. The essential question that required to be resolved was whether the termination of the service of the workman would amount to retrenchment as understood in the Industrial Disputes Act. Ext.W2 is the first appointment order issued to the workman. It is for a period of 12 weeks and he had worked from 16.3.1994 to 7.6.1994. Again by Ext.W4 order, he was appointed for a period of 12 weeks and he had worked from 15.6.1994 to 4.9.1994, followed by Ext.W6 on the basis of which he had worked from 1.9.1994 to 9.10.1994. The Tribunal has taken note of Clause 1 of these orders, which clearly stated that the appointments were temporary and that his services were liable to be terminated at any time during the period of appointment by giving 14 days notice. It was also stated that these appointments will be purely temporary and for the periods mentioned in those orders. The award discloses that the Tribunal has also taken note of the fact that while working as a temporary Clerk as aforesaid, the workman appeared for a test and interview for selection as permanent Clerk in the Bank and failed to succeed in the selection process, which he would not have done, had he been working permanently as contended by the workman. The Tribunal has also referred to the evidence tendered by the Regional Manager of the Bank in which he has deposed that the Bank had to obtain permission

from the Reserve Bank of India before making appointments against regular vacancies and that it was on account of the delay in this respect that the appointment of the workman was made purely temporary basis in order to take care of the exigencies of service. Further the existence of separate procedure for selecting permanent workman also was taken note of while concluding that the appointment was only temporary. It is on the basis of the evidence as above that the Tribunal entered the finding that the employment of the workman was only temporary and the termination of such an employment did not amount to retrenchment as provided in the Industrial Disputes Act.

4. The Tribunal has also dealt with and answered the contention of the workman that the Management had created artificial recordal breaks on the strength of Exts.W2 to W6. The contention of the petitioner that he was entitled to Sasthri Award and Bipartite Settlement also has been dealt with by the Tribunal in paragraphs 12 and 13 and this also has been found against the workman. It was on this basis that the Tribunal concluded that it is not a case of retrenchment. The evidence as appreciated by the Tribunal, can only lead to the conclusion that the workman was only a temporary appointee and that period of appointment expired by expiry of the

period agreed. Such a case will not be covered by Section 2(oo) of the Act and hence this will not make out a case of retrenchment and the management cannot be faulted for terminating his services.

5. It is also to be taken note of that even if the case set up by the workman is accepted that he had worked continuously on the basis of the three appointment orders, even that period do not make out 240 days of employment, attracting the provisions of the Industrial Disputes Act. Such being the factual situation, the workman has failed to make out a case of retrenchment as envisaged in the Industrial Disputes Act. If that be so, the termination of the petitioner's service did not warrant interference by the Tribunal and the award is to be sustained.

5. For the aforesaid reasons, I agree with the finding of the Tribunal and reject the contentions of the workman. In the result, the award is sustained and the Writ Petition is dismissed. No order as to costs.

Antony Dominic
Judge.